IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 190 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKORE BEMAJI MOTIJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 190 of 1998

MR DM SHAH for Petitioner No. 1

MR KOGJE, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE M.S.SHAH

Date of decision: 24/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The Appellant - accused has challenged in this Appeal, the impugned Judgment and order of conviction and sentence dated 15.1.1998, passed by the learned Additional Sessions Judge, Mehsana, Camp : Patan, in

Sessions Case No.58 of 1995, convicting the accused for offence u/s.302 I.P.Code and sentenced him to suffer Life Imprisonment and to pay fine of Rs.500/- i/d to further undergo 6 months R.I.

2. It is the case of the prosecution that on 10.12.1994 at about 5.00 p.m. the complainant Bhagwanbhai Ganeshbhai Patel came to the Hotel of Shivrambhai Prajapati in Vav Chowk at village Biliya. At that time Patel Shankerlal Narandas and Patel Mafatlal Jivrambhai were sitting with his nephew Patel Jivrambhai Becharbhai, therefore, he also sat with them. When they were talking at that time accused Thakor Bhimaji Motiji of Indirapura, Lalpur, Tal. Sidhpur, came near to them and shook hand with his nephew Jivrambhai Becharbhai. Thereafter, he lifted the cap from the head of Jivrambhai and threw it on the ground. Therefore, his nephew Jivrambhai got up and tried to take his cap from the ground, at that time accused gave one blow with pointed weapon to his nephew Jivrambhai on his chest, because of that his nephew fell down on the ground. They had seen the blood coming out. Thereupon, they immediately called the Jeep of Patel Babubhai Bhagabhai of his village, but they found Jivrambhai dead, therefore, dead body of Jivrambhai was kept on the cot. For personal reason the accused committed murder of Jivrambhai. F.I.R. (Ex.19) was recorded within 2 hours of incident at about 7.00 p.m. on that very day. Prior to that Police had received telephonic message at 6.00 p.m. from Prahladbhai Joitabhai of Bilia village (Ex.43) wherein it is stated that Bhemaji gave knife blow to Jivrambhai, therefore, the Police be sent immediately. On receiving this telephonic message P.I. Shri Rajendrasinh Rathod, Ex.39, reached the place of incident. There, he recorded the F.I.R. (Ex.19) of Bhagvanbhai, who is uncle of deceased Jivrambhai at 7.00 p.m. After recording the F.I.R. of complainant Bhagvanbhai, P.I. Shri Rathod recorded the statement of other witnesses i.e. Shankerlal Narandas Patel, Mafatbhai Jivrambhai Patel and others, who were present there at the time of incident. After completing the investigation the Police has filed the charge sheet against the accused before the learned Magistrate. Learned Magistrate committed the case against the accused to the Court of Sessions where the charge was framed against the accused for the offence u/s.302 I.P.Code. The accused did not plead guilty to the charge and therefore the trial was commenced. The prosecution examined several witnesses in support of the case before the learned trial Judge.

3. The defence of the accused was of total denial and as per his defence during reservation agitation he had supported Harijan of his village Bilia when there was

quarrel between Harijans and Patels, therefore, Patels have filed false case against him. However, learned trial Judge did not believe the defence of the accused and convicted the appellant - accused for the offence u/s.302 I.P.Code as, according to him, the evidence of 3 eye witnesses was sufficient to convict the accused for committing the murder of deceased Jivrambhai. Accordingly, the learned trial Judge convicted the accused by his impugned Judgment and order dated 15.1.1998 for the offence u/s.302 I.P.Code and sentenced him, as stated earlier, which is challenged in this Appeal.

4. Learned Counsel Shri D.M.Shah, appearing as an appointed Advocate for the accused, submitted that in the instant case the prosecution has examined only interested witnesses from the community of Patels only and though many independent witnesses were available they were not examined, therefore, benefit of doubt should be given to the accused and he should be acquitted. It is true that in the instant case the prosecution has examined main 3 eye witnesses, viz. (i) complainant Bhagvanbhai Patel, who is no one other than the uncle of deceased Jivrambhai at Ex.18, (ii) Shankerlal Narandas Patel, Ex.20, and (iii) Mafatbhai Jivrambhai Patel, Ex.21. All of them are from Patel community, but in our considered opinion their presence at the place of offence was natural. All of them have been cross examined in detail but nothing has come out in their cross examination.

5. Complainant Bhagvanbhai Patel, Ex.18 has stated in his evidence before the Court that at the time of incident he was present in Vav Chowk of village Bilia at about 5.00 p.m. on 12.10.1994, at that time Mafabhai Jivabhai (Ex.20), Shankerbhai and Jivrambhai Becharbhai (deceased) were sitting there. They were having tea and therefore he had also gone there. At that time accused came there from village Bilia side. He shook hand with deceased Jivrambhai and then threw the cap of Jivrambhai. When Jivrambhai tried to take his cap, at that time accused gave blow on the left side of his chest with pointed weapon, because of that Jivrambhai fell down and blood came out. Somebody called for Jeep. Jivrambhai made to sit in the Jeep but he was found dead. Therefore, dead body of Jivrambhai was kept on cot. Accused Bhemaji left with knife. Somebody called the Police. When Police came he lodged F.I.R. (Ex.19). He stated that if the knife is shown then he will not be able to identify because he had not seen such knife.

In his cross examination he has stated that near the hotel of Prajapati there is shop of Naai (Barber). However, he has denied the suggestion that at that time

hotel and Pan Galla were open. Near the place of incident there is residential area and at a short distance there is vaternery dispensary and school also. He has also admitted in his cross examination that because of the fair on account of Mataji's Palli thousands of people have come for Darshan of Mataji. In his village all community people are residing. Prior to that incident there was reservation agitation in his village between Harijans and Patels and because of that Harijans had to migrate from village. However, he does not know whether the accused had helped Harijans during that agitation. He has denied that because of such reason he has filed false complaint against the accused. He has also admitted that there is telephone facility in his village and he had not gone to the Police station after the incident. Police came to the place of incident and therefore he had given the complaint. Thereafter he had stated that he had given the complaint in writing. However, he had denied the suggestion that because Jivrambhai was suffering from Malaria fever he fell down on the pointed stone lying on the ground and therefore he had received injury and died. He has denied the suggestion that Shanekrbhai and Mafatbhai, two other eye witnesses, came after the incident. When he lodged F.I.R. Mafatbhai Jivrambhai, Bhaktibhai Hargovinddas,Shankerlal Naranbhai of his village were present. However, he has denied that first they gathered and then complaint was lodge. After recording his F.I.R. the police recorded the statement of Shankerbhai Narandas, Mafatbhai Jivrambhai. At the place of incident people had not gathered. He lifted Jivrambhai, but his cloths were not stained with blood. He has denied the suggestion that accused had not given the blows to Jivrambhai, however, he has admitted that he had not seen the weapon used by the accused. He has also denied the suggestion that because the accused helped Harijans at the time of agitation and therefore he has filed false complaint against the accused. He has admitted that he had not mentioned in his complaint that he was present at Vav Chowk and accused Bhemaji was coming from Bilia village side. He has also admitted that he has not stated in his complaint that Bhemaji gave knife blow on the left side of the deceased.

6. Learned Counsel Shri Shah submitted that the complainant Bhagvanbhai is a chance witness. He had not seen the actual incident. If he was there then he would have definitely seen the weapon used by the accused at the time of assaulting the deceased and his cloths also must have been stained with blood. He has admitted that he had lodged F.I.R. in writing. He also submitted that the complainant Bhagvanbhai had improved his version

before the Court that the accused gave knife blows on the left side of the chest of deceased Jivrambhai.

It is true that P.W.1 Bhagvanbhai has stated in his cross examination that he lodged the complaint in writing before the Police, but it appears that he improved the version by statting that the complaint was recorded in writing because P.I. Rajendrasinh, P.W. 10, Ex.39, who investigated the case clearly stated that Bhagvanbhai has not submitted his complaint in writing and he recorded his F.I.R. at the place of incident. His evidence is absolutely natural because though he was present at the place of incident he was not able to state what weapon was actually used by the accused and he could not see any pointed weapon used by the appellant accused for committing murder of deceased Jivrambhai. We are also not prepared to accept the submission of Shri Shah that because the accused helped Harijans in past at the time of reservation agitation, the complainant Bhagvanbhai and other Patels have falsely involved the accused in this case. Bhagwanbhai is the real uncle of deceased. He would not allow the real culprit to let go scot free and falsely involved the accused. It is also true that there are some contradictions in the evidence of Bhagwanbhai, but some minor contradiction would not destroy the evidence of Bhagvanbhai. It is true that Bhagvanbhai has stated that he lifted Jivrambhai and put him in Jeep, inspite of that he has not received any blood stain of deceased on his cloths, but he had not alone lifted deceased Jivram. He along with others lifted Jivram and put him in the Jeep. Therefore, he may not have any blood stain on his cloths. Therefore, there may not be any blood on his cloths. The incident in question took place in a broad day light at about 5.00 p.m. and within 2 hours of the incident the name of the accused is disclosed. There was hardly any time for the complainant Bhagvanbhai and others to concoct the evidence and file false case against the accused in this case, because the name of the accused was already disclosed in telephone worthy which was registered within one hour of the incident. The said telephone worthy was lodged by Prahladbhai Joitabhai on telephone from Bilia wherein it is stated that accused assaulted deceased Jivrambhai with knife.

7. Like complainant Bhagvanbhai, 2 other eye witnesses Shankerlal Narandas Patel, P.W.2, Ex.20 and Mafatlal Jivrambhai Patel, P.W.3, Ex.21 have also fully supported the prosecution case. However, the submission of Shri Shah was that eye witness Shankerlal Narandas is a got-up witness and Mafatlal Patel is absolutely an unnatural witness. In cross examination, witness Mafatbhai has stated in his evidence that they were

talking at the time of incident whereas witness Bhagvanbhai and Shankerlal have stated that they were having tea at the time of incident. This type of minor discrepancy in the evidence of prosecution witnesses bound to be there, but that would not be sufficient to discard the prosecution case. They were fully cross examined, but nothing substantially has come out in their cross examination. Merely because they are also from Patel community that fact itself is not sufficient to discard their evidence which is otherwise found trust worthy.

8. Shri D.M.Shah then submitted that Medical evidence does not support the prosecution case. He submitted that Dr.Jankiben Sirishbhai Pandit, P.W. 10, Ex.34. Having seen the Muddmal article Knife she stated in her cross examination that one side of the knife is sharp and other side is blunt, but she had clearly stated that the injuries were possible with that knife. Thus, it cannot be said that the medical evidence does not corroborate the evidence of eye witnesses. The accused was arrested on the same day at about 10.20 p.m. He had produced the Muddamal knife having blood stains on it before the police.

9. Considering the evidence of all the prosecution witnesses, we are of the considered opinion that while convicting the appellant - accused for the offence u/s.302 I.P.Code the learned Judge has not committed any error which calls for interference of this Court in this Appeal. The learned Judge has given solid and cogent reasons for convicting the accused and we are in complete agreement with the same.

In view of the above discussion, this Appeal fail and is dismissed.

(B.J.Shethna, J.)

Date : March 24, 2003

(M. S. Shah, J.)

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